

The Telecommunications Excise Tax is imposed upon the act or privilege of originating or receiving intrastate or interstate telecommunications in Illinois at the rate of 7% of the gross charges for such telecommunications purchased at retail from retailers. (This is a GIL.)

January 8, 1999

Dear Mr. Xxxxx:

This letter is in response to your letter dated October 26, 1998. The nature of your letter and the information you have provided require that we respond with a General Information Letter which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

Pursuant to our telephone conversation today with the Business Section Division, we are requesting a ruling to determine if we need to register for sales tax. COMPANY provides telephone, internet, and cable access to truckers at truckstops via a membership card that is purchased through vending machines at various truckstops. Our machines are physically in the following locations:

NAMES/ADDRESSES

Presently, sales tax is calculated into the price of the membership card. We divide the sales by the state tax rate to report taxable sales and then remit to the state the respective tax due.

Until the determination is made, we are going to continue remitting sales tax on a monthly basis.

Please don't hesitate to contact us at the address included in our letterhead above or #### for any further information you may need in your review process.

We appreciate your timeliness in processing this request.

Sales of membership cards, which enable purchasers to take advantage of member services, are generally not sales of tangible personal property and therefore are not taxable in Illinois. Sales of such cards represent sales of intangibles, and since the Retailers' Occupation Tax and Use Tax are triggered upon the transfer of tangible personal property, no sales tax liability attaches to such sales.

The Telecommunications Excise Tax is imposed upon the act or privilege of originating or receiving intrastate or interstate telecommunications in Illinois at the rate of 7% of the gross charges for such telecommunications purchased at retail from retailers. 35 ILCS 630/3 (1996 State Bar Edition). "Telecommunications," as defined in Section 2(c) of the Act, includes

without limitation, messages or information transmitted through the use of local, toll and wide area telephone service; private line services; channel services, telegraph services; teletypewriter; ... cellular mobile telecommunications service ... or any other transmission of messages or information by electronic or similar means, between or among points by wire, cable, fiber-optics, laser, microwave, radio, satellite or similar facilities. 35 ILCS 630/2 (1996 State Bar Edition).

The Act specifically exempts carrier access charges, right of access charges, charges for use of inter-company facilities, and all telecommunications resold in the subsequent provision of, used as a component part of, or integrated into end-to-end telecommunications service, as sales for resale. See Section 2(c) of the Act. Charges for services that are provided by a telecommunications retailer that are necessary for, or are directly related to, the retailer's provision of telecommunications to customers are included in the gross charges subject to tax. See 86 Ill. Adm. Code 495.100, enclosed.

In general, cable services are not subject to the Telecommunication Excise Tax. Basic charges for use of local telephone and cellular phones are subject to tax. However, gross charges do not include charges paid by inserting coins in coin-operated telecommunication devices.

Generally, persons that provide subscribers access to the internet and who do not, as part of that service, charge subscribers for the line or other transmission charges that are used to obtain access to the internet are not considered to be telecommunications retailers from these activities. It is our general understanding that most internet access providers do not, as part of their billing, charge subscribers for such line charges, but instead, pay all transmission costs to their telecommunications providers. If companies provide telecommunications to such end-users (e.g., to the internet access providers described immediately above) and are also "retailers maintaining a place of business in this State," they are required to collect the tax from such internet access providers and remit it to the Department. If, however, the internet access providers charge subscribers for line or other transmission charges, they should provide their telecommunications providers with Certificates of Resale and should themselves collect and remit tax.

Sales of prepaid telephone cards by retailers are not subject to Retailers' Occupation Tax. However the Telecommunications Excise Tax consequences from sales of telephone cards by retailers may vary depending upon whether or not the Department deems them to be retailers of telecommunications.

In general, retailers who purchase telephone cards from telephone service providers and then resell the cards to customers for marked-up prices are not responsible for collecting and remitting the tax from their customers. The tax is incurred at the time the telecommunications originate or are received in a

taxable manner. The amount of telecommunications charges for which the cards are redeemed by the telephone service providers should include any amount of Telecommunications Excise Tax incurred. The telephone service providers charge the phone calls and the tax against the balance of the cards as they are responsible for collecting and remitting the tax.

In contrast, retailers that purchase telecommunications units from telephone service providers and sell them at retail to their customers present situations similar to hotels who sell telecommunications services. See Section 495.100. In these cases, the retailers would be required to register as telecommunications retailers and collect and remit Telecommunications Excise Tax. The tax base would be the amounts charged to card purchasers for the taxable services subsequently provided (i.e., calls that originate or terminate in Illinois).

When the cards are sold in Illinois, the Department presumes that the calls will originate or terminate in this State. Retailers purchasing telecommunications units have the burden of establishing that the charges are exempt from Telecommunications Excise Tax. The only way to properly document such exemptions would be through records of the telephone service providers. Therefore, as a practical matter, since the retailers will not know at the time of sale what taxable services cardholders will later consume, retailers should charge the tax on the full sales prices of the cards.

I hope this information is helpful. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Gina Roccaforte
Associate Counsel

GR:msk
Enc.